UMW INDUSTRIES (1985) SDN BHD

v.

LIM CHEE HIAN

COURT OF APPEAL, PUTRAJAYA
MOKHTAR SIDIN JCA
ARIFIN ZAKARIA JCA
HASHIM YUSOFF JCA
[CIVIL APPEAL NO: T-03-51-98]
30 DECEMBER 2004

CIVIL PROCEDURE: *Documents - Application for leave to admit as further evidence - Documents were not produced during trial when associated issue was being challenged - Whether time constraint a valid justification for not producing documents at relevant time - Whether authenticity of documents doubted*

This appeal was in connection with civil appeal no T-03-50-98 ('earlier appeal') published in [2005] 1 CLJ 173. In dismissing the earlier appeal, it was decided that the appellant's request to issue a bankruptcy notice ('BN') against the respondent was not in accordance with s. 133 of the Bankruptcy Act 1967 ('the Act') and r. 215 of the Bankruptcy Rules ('Rules') 1969. This was because one Mr Siew Weng Leong ('Mr Siew) whom the appellant alleged was authorised to make the said request was found by the court as not authorised to do so. In this appeal, the appellant sought leave to admit a director's circular resolution and a letter of authority dated 1 October 1987 (the 'documents') as proof of authorization. It should be noted that in the earlier appeal the appellant had admitted similar documents dated 21 September 1990.

Held (dismissing the appeal)
Per Mokhtar Sidin JCA delivering the judgment of the court:

[1] There was no reason why the documents could not be produced at the hearing when the authority of Mr Siew to make the request for the issue of the BN was challenged. The reason given by the appellant that the documents were not admitted then due to time constraint was not valid and cogent enough to justify the application for leave. The documents too directly contradicted the director's circular resolution and the letter of authority dated 21 September 1990 that were tendered in the earlier appeal. That letter of authority clearly showed that Mr Siew was never authorised to act for the appellant. This raised reasonable doubts as to the authenticity

of the documents to be admitted. Further, the documents were not in existence prior to the trial. They were made after the hearing commenced. However, the production of the documents did not in any way affect the decision made in the earlier appeal, namely, there was no evidence to show that the signature on the request for the issue of the BN was that of Mr Siew. (pp 321 e-h & 322 a)

*[**Bahasa Malaysia** Translation Of Headnotes*

Rayuan di sini melibatkan rayuan sivil no. T-03-50-98 ('rayuan terdahulu') yang disiarkan di [2005] 1 CLJ 173. Sewaktu menolak rayuan terdahulu, keputusan telah dibuat bahawa permohonan perayu untuk mengeluarkan notis kebankrapan ('BN') terhadap responden adalah tidak mematuhi s. 133 Akta Kebankrapan 1967 ('Akta') serta per. 125 Kaedah-Kaedah Kebankrapan 1969 ('Kaedah'). Ini kerana seorang En. Siew Weng Leong ('En. Siew'), yang dikatakan perayu sebagai orang yang diberi kuasa untuk membuat permohonan, telah didapati tidak mempunyai kuasa untuk berbuat demikian. Dalam rayuan semasa, perayu memohon kebenaran untuk mengemukakan suatu pekeliling resolusi pengarah dan surat kuasa bertarikh 1 Oktober 1987 ('dokumen-dokumen') untuk membuktikan pemberikuasaan. Fakta menunjukkan bahawa dalam rayuan terdahulu, dokumen yang serupa bertarikh 21 September 1990 telah juga dikemukakan oleh perayu.

Diputuskan (menolak rayuan)
Oleh Mokhtar Sidin HMR menyampaikan penghakiman mahkamah:

[1] Tiada sebab mengapa dokumen-dokumen tidak boleh dikemukakan di pendengaran apabila kuasa En. Siew untuk membuat permohonan untuk mengeluarkan BN telah dicabar. Alasan perayu bahawa dokumen-dokumen telah tidak diterima-masuk sebelum ini disebabkan oleh kesuntukan masa bukanlah suatu alasan yang sah dan menyakinkan bagi menjustifikasikan permohonan untuk kebenaran. Dokumen-dokumen juga secara terang bercanggah dengan pekeliling resolusi pengarah dan surat kuasa bertarikh 21 September 1990 yang dikemukakan di dalam rayuan terdahulu. Surat kuasa itu menunjukkan dengan jelas bahawa En. Siew tidak pernah diberi kuasa untuk bertindak bagi pihak perayu. Ini membangkitkan keraguan munasabah berkaitan kesahihan dokumen-dokumen yang hendak dikemukakan. Lagi, dokumen-dokumen tidak wujud sebelum perbicaraan. Ia dibuat selepas perbicaraan bermula. Bagaimanapun, pengemukaan dokumen-dokumen sama sekali tidak menjejaskan keputusan yang dibuat dalam rayuan terdahulu, iaitu, tiada keterangan yang menunjukkan bahawa tandatangan pada permohonan untuk mengeluarkan BN adalah tandatangan En. Siew.

For the appellant - Lee Yin Paik; M/s Skrine
For the respondent - Preetam Kaur (Khalid Mohamed); M/s Rithauddin & Azlin

[Appeal from High Court, Kuala Terengganu; Bankruptcy No: 29-516-89]

Reported by Usha Thiagarajah

JUDGMENT

Mokhtar Sidin JCA:
We have inadvertently left out the judgment in respect of Rayuan Sivil No. T-03-51-98 which we have also dismissed earlier. We now give our reasons for dismissing the appeal.

The appeal in Rayuan Sivil No. T-03-51-98 is in respect of an application by the appellant for leave to admit as further evidence:

(a) the Director's Circular Resolution of UMW Industries (1985) Sdn Bhd dated 1 October 1987 (LPM 1);

(b) the letter of authority dated 1 October 1987 issued by UMW Industries (1985) Sdn Bhd (LPM 2).

We agreed with the learned trial judge in dismissing the application. As can be seen from the notes of evidence those documents were supposed to be in the possession of the appellant before the hearing and during the trial. We see no reason why those documents could not be produced at the hearing when the authority of Mr, Siew Weng Leong to make the request was challenged. We agreed with the learned judge that the reason tendered by the appellant as the non-production of those documents during the trial, ie, due to time constraint, was not valid and cogent enough to justify the application.

Looking at those two documents which were found in the record of appeal, it is clear to us that those documents would be in direct contradiction of the Director's Circular Resolution dated 21 September 1990 and especially the letter of authority where it is stated:

> That any act or thing done by the said Siew Weng Leong in respect of the above matters prior to the date hereof has been ratified and confirmed.

The above caption clearly show that before this letter of authority. Mr. Siew Weng Leong was never authorized to act for the appellant. This raised reasonable doubt as to the authenticity of the documents, LPM 1 and LPM 2. In our view, these documents were not in existence prior to the trial. They were made after the hearing had commenced.

In our view, the production of those documents would not in any way affect our decision because we have stated earlier in our decision that there is no evidence to show that the signature on the request was that of Mr. Siew Weng Leong.

For the above reasons, we dismissed the appeal in Rayuan Sivil No. T-03-51-98 with costs.